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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/091,126	03/04/2002	William Kirby Smith	13515.2US11	5135
7590 08/15/2006 HAMRE. SCHUMANN, MUELLER & LARSON, P.C. P.O. BOX 2902-0902 MINNEAPOLIS, MN 55402			EXAMINER CHAMBERS, TROY	
			ART UNIT	PAPER NUMBER
			3641	

DATE MAILED: 08/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Applicati n No.</b>		<b>Applicant(s)</b>	
	10/091,126		SMITH ET AL.	
	<b>Examiner</b>		<b>Art Unit</b>	
	Troy Chambers		3641	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 17,21,27 and 28 is/are pending in the application.
- 4a) Of the above claim(s) 28 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 17, 21 and 27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. ____.  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date ____.   | 6) <input type="checkbox"/> Other: ____.                                    |

**DETAILED ACTION**

***Election/Restrictions***

1. Applicant's election with traverse of Species A (Figs. 6A and 6B), claims 17 and 21 in the reply filed on 12/20/05 are acknowledged. The traversal is on the ground(s) that the amended claims were indicated as allowable. This is not found persuasive because the instant action is a new non-final Office action containing a new interpretation of previously cited prior art.

The requirement is still deemed proper and is therefore made FINAL.

2. Claims 25 and 26 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 12/20/05.

3. Newly submitted claim 28 directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: Claim 28 is drawn to the non-elected species of Figure 7.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claim 28 is withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 17, 21 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. 3989027 issued to Kahelin in view of U.S. 3990426 issued to Stokes and established rationales for obviousness. Specifically, Kahelin discloses a pneumatic projectile propulsion apparatus for throwing baseballs and tennis balls. Disclosed therein is a pressure canister 18, an exit tube 60, 88; a hopper 12; and a blower 30 for supplying air to canister 24. The covered blower is capable of being unplugged and placed within the hopper for storage. Kahelin does not disclose the particulars of the canister, the barrel or the blower. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the device of Kahelin with the particulars necessary to propel a baseball or tennis ball at the claimed speeds, since it has been held to be within the general skill of a worker in the art to select a known material or device on the basis of its suitability for the intended use as a matter of obvious design choice. For example, Stokes recognizes that various velocities can be achieved by varying the particulars of the barrel (col. 4, ll. 60, to col. 5, ll. 5). This reasoning applies equally to the canister since a desired pressure capacity proportional to the dimensions of the can. Moreover, Kahelin (as well as many other cited prior art devices) disclose a standard canister in combination with a standard blower. It would

have been a matter of design choice to provide the device of Kahelin with the particulars of the blower since the applicant has not disclosed that the particulars of the blower solves any stated problems or is for any particular purpose and it appears that the invention would perform equally well with a standard blower of standard amperage.

### ***Response to Arguments***

6. Applicant's arguments filed 08/02/2006 have been fully considered but they are not persuasive. Applicant argues that the cited prior art does not teach or disclose the 90 mph feature as required in claim 17. However, it is the examiner's position that the cited prior art is inherently capable of achieving the speeds claimed by the applicant. Applicant's "wherein" clause merely presents desired results rather than specific structural elements. In terms of structure, claim 17 merely requires a single electric blower. The claimed voltage, amperage, airflow and speed are merely desired results not connected to any previously recited structure.

### ***Conclusion***

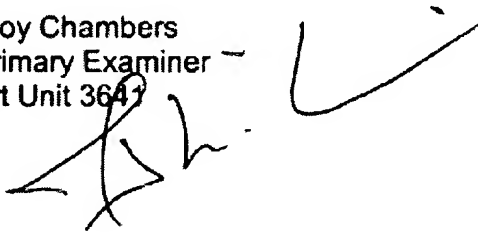
7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Troy Chambers whose telephone number is (571) 272-6874 between the hours of 7:00 a.m. to 3:30 p.m., M-F. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael J. Carone, can be reached at (571) 272-6873.

Troy Chambers  
Primary Examiner  
Art Unit 3641

A handwritten signature in black ink, appearing to be 'Troy Chambers', is written over the printed name and title. To the right of the signature is a large, stylized checkmark or 'L' shape.

TC  
10 August 2006